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Respondent.

Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

THOMAS C. HERRIFORD,)	
)	
Appellant,)	WD69707
v.)	
)	OPINION FILED:
STATE OF MISSOURI,)	November 3, 2009
)	
Respondent.)	

Before Division Three Judges: Thomas H. Newton, C.J., and Mark D. Pfeiffer and Karen King Mitchell, JJ.

Thomas C. Herriford appeals the denial of his Rule 24.035 motion by the Circuit Court of Jackson County. In his sole point on appeal, Herriford argues that the motion court erred in overruling his motion because he contends that his attorney's failure to obtain a mental evaluation prior to a plea deal was ineffective assistance of counsel that resulted in his plea being involuntary.

AFFIRMED.

Division Three holds:

In his motion, Herriford maintained that his plea deal was involuntary because he accepted the deal prior to receiving a mental health evaluation. Herriford argues that the results of that evaluation, which found that he suffered from posttraumatic stress disorder and depressive disorder, could have resulted in his receiving a better plea deal.

Herriford's argument is based on mistaken interpretation of the standards for a Rule 24.035 motion. For Herriford's motion of ineffective assistance of counsel to be successful, he must show that, but for his counsel's errors, he would not have agreed to the plea deal and instead have gone to trial. Herriford did not seek to go to trial; instead, he simply sought a better plea deal. Even if that argument represented a viable claim, Herriford offered no evidence to support the contention that a better plea deal was available.

Opinion by: Mark D. Pfeiffer, Judge

November 3, 2009

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